

1 **I. FINDINGS OF FACT**

2 **A. Vision Network International's Loan History**

3 1. On June 11, 2007, Vision Network International
4 Corporation ("Vision") borrowed \$400,000 from
5 Defendant. The loan was for one year, i.e., Vision was
6 to repay Defendant no later than June 11, 2008.

7 2. The terms of the \$400,000 loan were embodied in
8 a Promissory Note (Ex. 18), a Business Loan Agreement
9 (Ex. 19), a Commercial Security Agreement (Ex. 20), a
10 Commercial Guaranty (Ex. 21), and a Deed of Trust (Ex.
11 22) executed by Vision's owner and president, Han Song
12 ("Song").

13 3. On October 15, 2008, Saehan Bank and Vision
14 agreed to a Change In Terms Agreement which: (1)
15 reduced the principal amount of the \$400,000 Promissory
16 Note to \$300,000; and (2) renewed the maturity date of
17 the \$300,000 Promissory Note for another 180 days, to
18 March 11, 2009. Ex. 24.

19 4. Also on October 15, 2008, Vision executed a new
20 separate Promissory Note with Defendant for \$100,000
21 repayable by October 15, 2009. Ex. 25. The terms of
22 the \$100,000 loan were embodied in the \$100,000
23 Promissory Note, a Business Loan Agreement (Ex. 26), a
24 Commercial Security Agreement (Ex. 27), a Commercial
25 Guaranty (Ex. 28), and a Deed of Trust (Ex. 29)
26 executed by Song.

27 5. On April 3, 2009, Defendant agreed to allow
28 Vision to execute a Change In Terms Agreement for the

1 \$300,000 loan. This Change in Terms Agreement extended
2 the maturity date of the \$300,000 loan to September 11,
3 2009. Ex. 30.

4 6. On February 16, 2010, Defendant agreed with
5 Vision to another Change In Terms Agreement to further
6 extend the maturity date of the \$300,000 loan to March
7 11, 2011. Ex. 31.

8 **B. Vision Network's Default on the Loans**

9 7. According to the terms of both the \$300,000
10 Promissory Note and the \$100,000 Promissory Note, the
11 Borrower is in default when it "fails to make any
12 payment due under this Note." Exs. 18, 25.

13 8. During the first six months of 2010, Vision was
14 late on its monthly payments three times.

15 9. When Vision missed its December 2010 and
16 January 2011 payments, Song promised Defendant that
17 Vision would resolve its outstanding payments and
18 become current on its loan by the end of January 2011.
19 Vision, however, did not become current on its loan.

20 10. By February 1, 2011, Vision was in default on
21 both its \$300,000 loan and its \$100,000 loan. On the
22 \$300,000 loan, Vision had failed to make its monthly
23 payments of accrued interest due on December 11, 2010
24 and January 11, 2011. On its \$100,000 loan, Vision had
25 failed to make its monthly payments of principal and
26 accrued interest due on December 15, 2010 and January
27 15, 2011. Thus, as of February 1, 2011, it was 52 days
28 late on its \$300,000 loan and 48 days late on its

1 \$100,000 loan. Exs. 33, 34.

2 11. On February 1, 2011, Defendant sent Vision two
3 "Demand Of Cure" letters, one for each loan. Ex. 33,
4 34. Each letter warned Vision that it was "currently
5 in default." Each letter warned Vision that "[i]f we
6 do not receive the demanded amount from you by 5:00
7 p.m. 02/09/2011, we will have no alternative but to
8 initiate appropriate legal actions against you."

9 12. February 9, 2011 passed without Vision making
10 any payment on either loan.

11 13. The \$300,000 Promissory Note would have matured
12 March 11, 2011. Ex. 31.

13 14. The original \$400,000 Promissory Note, which
14 was changed to \$300,000 states: "Upon the occurrence of
15 an event of default, as defined in the Business Loan
16 Agreement . . . all sums of Principal and Interest then
17 remaining unpaid shall become due and payable, as
18 provided in the Business Loan Agreement." Ex. 18.

19 15. The \$100,000 Promissory Note also states:
20 "Upon the occurrence of an event of default, as defined
21 in the Business Loan Agreement . . . all sums of
22 Principal and Interest then remaining unpaid shall
23 become due and payable, as provided in the Business
24 Loan Agreement." Ex. 26.

25 16. The Business Loan Agreements for the two loans
26 similarly state: "If any Event of Default shall occur
27 . . . at Lender's option, all indebtedness immediately
28 will become due and payable, all without notice of any

1 kind to Borrower . . . In addition, Lender shall have
2 all the rights and remedies provided in the Related
3 Documents, or available at law, in equity, or
4 otherwise." Exs. 19-4, 26-4.

5 17. The contractual "Right of Setoff" exists
6 expressly in the two Promissory Notes (Exs. 18-2,
7 25-2), the two Business Loan Agreements (Exs. 19-4,
8 26-4), the two Commercial Security Agreements (Exs. 20-
9 1, 27-1), and the Commercial Guaranties executed by
10 Song (Exs. 21-2, 28-2). Each document states: "Lender
11 reserves a right of setoff." The Promissory Notes,
12 Business Loan Agreements and Commercial Security
13 Agreements each add that the right of setoff will be
14 applicable in all of "Borrower's accounts with Lender."
15 Song's two Commercial Guaranties add that the right of
16 setoff will apply "in all Guarantor's accounts with
17 Lender."

18 18. However, all of the documents state that the
19 right of setoff does not apply to "any trust accounts
20 for which setoff would be prohibited by law."

21 **C. The January 10, 2011 Meeting Between Song and Sean**
22 **Jeong**

23 19. Vision's president Song and Defendant's loan
24 officer, Sean (Sung Il) Jeong ("Jeong") met at Vision's
25 offices in January 10, 2011 to discuss the delinquent
26 payments on the \$300,000 and \$100,000 loans.

27 20. On February 1, 2011, Jeong prepared two Credit
28 File Transfer Transmittal Sheets (Exs. 35, 36), which

1 placed the meeting on January 10, 2010. However, the
2 Court finds that the date of this meeting actually took
3 place on January 10, 2011.

4 21. Song testified that there was some discussion
5 to consolidate the two outstanding loans and to
6 extending their maturity date by ten years. However,
7 the Court finds that no agreement was ever made.

8 22. Jeong recorded his recollection of this January
9 10, 2011 meeting in the two Credit File Transfer
10 Transmittal Sheets he prepared in ordinary course on
11 February 1, 2011 - ten (10) days before \$269,576 was
12 deposited into Vision's general deposit account. Exs.
13 35, 36 ("Meeting was held with the borrower on
14 1/10/2010 [sic] to discuss future plans. . . . Also,
15 *the borrower is currently purchasing and exporting*
16 *scrap steel* from Jamaica/Dominican republic to S.
17 Korea.") (emphasis added).

18 23. At the meeting, Song told Jeong that Vision was
19 (1) continuing to work to generate sales of LED
20 lighting to cities converting their street lighting and
21 (2) beginning to work with a friend in Hong Kong to
22 purchase steel scrap in Jamaica and the Dominican
23 Republic.

24 24. Song, however, did not say that he was
25 going to purchase steel on behalf of Plaintiff nor did
26 he say that he was going to act as an "agent" for
27 Plaintiff.

28 25. Song never used the words "agent,"

1 "commission," "trust," or "Joint Base." Jeong
2 understood that Vision was beginning to buy and sell
3 steel scrap for profit and not acting as an agent for
4 another company.

5 26. Song never told Jeong or anyone working for
6 Defendant that Defendant should expect to receive any
7 transfers of large sums of money to be held in trust.

8 **D. Plaintiff's Deposit into Vision's Account**

9 27. On February 11, 2011, Plaintiff submitted to
10 the Industrial Bank Of Korea ("IBK"), Hong Kong Branch,
11 an Application For Outward Remittance by Telegraphic
12 Transfer instructing the transfer and deposit of
13 \$269,576.00 into Vision's general deposit checking
14 account Number 001-604104 at Saehan Bank (the "Wired
15 Sum"). Ex. 6.

16 28. Plaintiff's Application appeared to instruct a
17 straight deposit. There were no special instructions,
18 such as "in trust" or "to Vision Network as agent for
19 Joint Base." Plaintiff left blank the space on the
20 Application for "Message/Instructions." Ex. 6.

21 29. Neither Plaintiff nor Vision ever considered
22 establishing a trust account with Defendant.

23 30. Soon after Plaintiff deposited the Wired Sum,
24 two of Defendant's employees were alerted of the
25 deposit. These two employees, first vice president and
26 special assets manager, Brandon Kim ("Brandon Kim"),
27 and senior vice president and senior credit officer
28 Jinsoo Kim, investigated the deposit and became aware

1 that Vision was in default for two loans.

2 31. Brandon Kim was aware of Defendant's setoff
3 rights but called Defendant's outside general counsel,
4 Heesok Park, Esq., ("Park") of Park & Lim, to discuss
5 the legality of collecting on Defendant's outstanding
6 loans with the Wired Funds in Vision's Account.

7 32. After discussing the matter with Park, Brandon
8 Kim "froze" the Wired Sum in Vision's account Number
9 001-604104 on February 11, 2011.

10 33. On February 11, 2011, Song submitted a Wire
11 Transfer Request to Defendant requesting that Defendant
12 wire-transfer \$219,472 from Vision's Account to the
13 account of Metales Antilanos, S.A. at Continental
14 National Bank of Miami. Ex. 7.

15 34. Defendant refused to honor Vision's Wire
16 Transfer Request, notifying Song that a freeze of the
17 Wired Sum in Vision's Account had been imposed due to
18 the fact Vision had defaulted on both of its loans from
19 Defendant.

20 35. Some time thereafter, Defendant setoff the
21 Wired Sum against accrued interest and the principal
22 owing under Vision's two defaulted loans. This reduced
23 Vision's underlying obligation to Defendant.

24 36. On March 14, 2011, which was more than a month
25 after Defendant had imposed its freeze of the Wired
26 Sum, Vision sent Defendant a copy of an Agency
27 Agreement between Plaintiff and Vision. Ex. 1.

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II. CONCLUSIONS OF LAW

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2 1. Joint Base failed to prove its burden by a
3 preponderance of the evidence that it transferred the
4 Wired Sum to Vision on February 11, 2011, in trust as
5 its agent. Purdy v. Bank of America, 2 Cal. 2d 298,
6 301 (1935); Chang v. Redding Bank Of Commerce, 29 Cal.
7 App. 4th 673, 681 (1994).

8 2. Plaintiff failed to meet its burden to prove by
9 a preponderance of the evidence that on February 11,
10 2011, when Defendant exercised dominion and control
11 over the Wired Sum by putting a freeze on it and
12 refusing Vision's Wire Transfer Request, Defendant knew
13 or had reason to know that the Wired Sum was being
14 transferred to Vision in trust as Plaintiff's agent.
15 Van de Kamp v. Bank of America, 204 Cal. App. 3d 819,
16 858 (1988).

17 3. Once the Wired Sum was deposited in Defendant's
18 account, title to the Wired Sum immediately passed from
19 Plaintiff to Vision to Defendant. Morse v. Crocker
20 National Bank, 142 Cal. App. 3d 228, 232 (1983).

21 4. On February 11, 2011, Vision was in default on
22 its two loans from Defendant.

23 5. The \$300,000 Promissory Note states:
24 "Upon the occurrence of an event of default, as defined
25 in the Business Loan Agreement . . . all sums of
26 Principal and Interest then remaining unpaid shall
27 become due and payable, as provided in the Business
28 Loan Agreement."

1 6. The Business Loan Agreements state: "If any
2 Event of Default shall occur . . . at Lender's option,
3 all indebtedness immediately will become due and
4 payable, all without notice of any kind to Borrower
5 . . . In addition, Lender shall have all the rights and
6 remedies provided in the Related Documents, or
7 available at law, in equity, or otherwise."

8 7. The contractual right of setoff exists
9 expressly in the two Promissory Notes, the two Business
10 Loan Agreements, the two Commercial Security
11 Agreements, and the Commercial Guaranties executed by
12 Vision's president Song. Each document states:
13 "[l]ender reserves a right of setoff." The Commercial
14 Guaranties signed by Song expressly extend the right of
15 setoff to Song's accounts.

16 8. If an account holder is also indebted to the
17 bank and his loan is in default, there is a mutuality
18 of obligation (i.e., both the bank owes the account
19 holder and the account holder owes the bank) from which
20 flows an equitable right of setoff - the bank may
21 setoff its debt against the depositor's debt by
22 appropriating funds from the account holder's account.
23 Gonsalves v. Bank of America, 16 Cal. 2d 169, 173
24 (1940).

25 9. Defendant's decision to freeze the Wired Sum on
26 February 11, 2011, was not conversion of the Wired Sum,
27 but the commencement of Defendant's proper exercise of
28 its contractual and equitable right to setoff the Wired

1 Sum to Vision against the balance of accrued interest
2 and principal owed by Vision to Defendant.

3 10. There is no duty resting upon a bank to
4 prosecute an inquiry to determine from what source the
5 money so deposited was derived. American Surety Co. v.
6 Bank of Italy, 63 Cal. App. 149, 159 (1923).

7 11. Defendant is not liable to Plaintiff for its
8 first claim of conversion. Accordingly, the Court
9 finds it is not appropriate to issue declaratory relief
10 in favor of Plaintiff, and thus, the Court rules in
11 favor of Defendant for Plaintiff's second claim for
12 declaratory relief. Furthermore, the Court finds that
13 Defendant is also not liable for Plaintiff's third
14 claim for money had and received.

15 **III. CONCLUSION**

16 For the foregoing reasons, judgment is hereby
17 granted in Defendant's favor as the Court finds that
18 Defendant is not liable for any of the claims asserted
19 by Plaintiff. The Court grants costs to Defendant as
20 the prevailing party.

21
22 **IT IS SO ORDERED.**

23 DATED: June 19, 2012

24 RONALD S.W. LEW

25 **HONORABLE RONALD S.W. LEW**

26 Senior, U.S. District Court Judge
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